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In re application of : Thomas GRAFENAUER

Mail Stop Amendment
Confirmation No. 8419
 Attorney Docket No. P27089

Application No. : 10/697,567

Group Art Unit: 3635

Filed : October 31, 2003

Examiner : Laux, Jessica L.

For : FLOOR PANEL

Mail Stop Amendment

Commissioner for Patents
 U.S. Patent and Trademark Office
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Sir:

Transmitted herewith is an **Appeal Brief under C.F.R. § 41.37** in the above-captioned application.

☐ Small Entity Status of this application under 37 C.F.R. 1.9 and 1.27 has been established by a previously filed statement.

☐ A verified statement to establish small entity status under 37 C.F.R. 1.9 and 1.27 is enclosed.

☐ A Request for Extension of Time.

☐ No additional fee is required.

The fee has been calculated as shown below:

Claims After Amendment	No. Claims Previously Paid For	Present Extra	Small Entity		Other Than A Small Entity	
			Rate	Fee	Rate	Fee
Total Claims: 10	*20	0	x 25=	\$	x 50=	\$0.00
Indep. Claims: 3	**3	0	X100=	\$	X200=	\$0.00
Multiple Dependent Claims Presented			+160=	\$	+380=	\$0.00
Appeal Brief				\$		\$500.00
			Total:	\$	Total:	\$500.00

* If less than 20, write 20

** If less than 3, write 3


☐ Please charge my Deposit Account No. 19-0089 in the amount of \$_____.

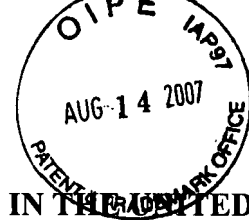
☒ A check in the amount of **\$500.00** to cover the filing fee is included.

☒ The U.S. Patent and Trademark Office is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 19-0089.

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 C.F.R. 1.17, including any required extension of time fees in any concurrent or future reply requiring a petition for extension of time for its timely submission (37 C.F.R. 1.136(a)(3)).


 Andrew M. Calderon
 Reg. No. 38,093



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s) : Thomas GRAFENAUER

Group Art Unit: 3635

Appln. No. : 10/697,567

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Confirmation No.: 8419

For : FLOOR PANEL

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Commissioner for Patents
United States Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief-Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This appeal is from the Examiner's rejection of claims 1, 3-7, 9, 12, and 13 as set forth in the Final Office Action dated March 30, 2007. A Notice of Appeal and the associated fee under 37 C.F.R. §41.20(b)(1) were timely submitted on June 14, 2007.

Accordingly, this Appeal Brief is being timely submitted by the initial due date of August 14, 2007. Payment of the requisite fee under 37 C.F.R. §41.20(b)(2) is submitted herewith. No additional fee is believed to be required for filing the instant Appeal Brief. However, if for any reason the necessary fee is not associated with this file, the undersigned authorizes the charging of any filing fees for the Appeal Brief and/or any necessary extension of time fees to Deposit Account No. 19 - 0089.

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(I) REAL PARTY IN INTEREST

The real party in interest is Kronotec AG, assignee of the entire interest in the above-identified application by an assignment recorded in the U.S. Patent and Trademark Office on February 9, 2004, at Reel 014966 and Frame 0244.

(II) RELATED APPEALS AND INTERFERENCES

The Appellants, their legal representatives and the Assignee are not currently aware of any appeals, interferences, or judicial proceedings that may directly affect or be directly affected by or have some bearing on the Board's decision in this appeal. Attached hereto is a Related Proceedings Appendix showing no related appeals or interferences.

(III) STATUS OF THE CLAIMS

In the Final Office Action dated March 30, 2007, claims 1, 3-7, 9, 12, and 13 are pending and rejected. Claims 1, 3-7, 9, 12, and 13 are being appealed and are listed in the "Claims Appendix" attached herewith.

(IV) STATUS OF THE AMENDMENTS

All of the amendments have been entered. The claims under appeal are claims 1, 3-7, 9, 12, and 13 presented in the Amendment filed January 3, 2007.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER**Independent Claim 1**

By way of non-limiting example, the invention provides for a floor panel which is bounded in a horizontal plane by a top side 15 having a decorative layer 16, and an underside 7 provided for bearing on an underlying surface (FIG. 1). The floor panel is provided with means for releasably connecting at least two panels. The structure, material, or acts that correspond to the means for releasably connecting at least two panels is: the tongue 10 and groove 3 connection on the first side (FIG. 1) and/or the form-fitting elements 23, 24 and undercuts 230, 240 on the second side (FIG. 3). The connecting means are formed on at least one first side edge (FIG. 1) such that locking takes place in a transverse direction (Q) and vertical direction (V). (See line 12 of page 3 through line 22 of page 4.)

The floor panel further comprises form-fitting elements 23, 24 for locking in the vertical direction (V) with a further panel formed on a second side edge (FIG. 3) running at an angle to the first side edge. The form-fitting elements 23, 24 are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls 21, 22 (FIG. 3). (See line 24 of page 4 through line 11 of page 5.)

The floor panel further comprises a tongue 10 formed on the first side edge and extending in the longitudinal direction of the first side edge, and a recess 3 corresponding to the tongue 10 formed on an opposite side edge (FIG. 1). An underside 120 of the tongue 10, starting from a tip of the tongue 10, has a continuously curved contour. A radius of curvature of the contour of the underside 120 of the tongue 10 is constant over at least 90 degrees (FIG. 1). (See lines 25-34 of page 3.)

Independent Claim 5

By way of non-limiting example, the invention provides for a floor panel comprising a top side 15, an underside 7 for bearing on an underlying surface, a first side edge having a tongue 10, and an opposite side edge having a recess 3 corresponding to the tongue 10 (FIG. 1). (See line 12 of page 3 through line 22 of page 4.) The floor panel further comprises a second side edge extending in a transverse direction to the first side edge and having form-fitting elements 23, 24 for locking in a vertical direction with a further panel (FIG. 3). The form-fitting elements 23, 24 are spaced apart from one another in the vertical direction V and the transverse direction Q (FIG. 3). (See line 24 of page 4 through line 11 of page 5.) The second side edge includes a first step-like milled relief 20 starting from the underside 7 and having an essentially vertical inner wall 21 and an essentially vertical outer wall 22 (FIG. 3). One of the form-fitting elements 23 is formed on the inner wall 21 and the other form-fitting element 24 is formed on the outer wall 22 (FIG. 3). (See line 24 of page 4 through line 11 of page 5.)

The first step-like milled relief 20 includes an essentially horizontal head surface 26 with a channel 26' formed therein (FIG. 2). (See lines 15-21 of page 7.)

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(A) Claims 1, 3-7, 9, 12, and 13 are rejected under 35 U.S.C. §102(b) for being anticipated by WO 01/75247 in the name of Palsson ("Palsson").

(VII) ARGUMENTS**(A) Claims 1, 3-7, 9, 12, and 13 are rejected under 35 U.S.C. §102(b) for being anticipated by WO 01/75247 to Palsson ("Palsson").****Claims 1 and 3**

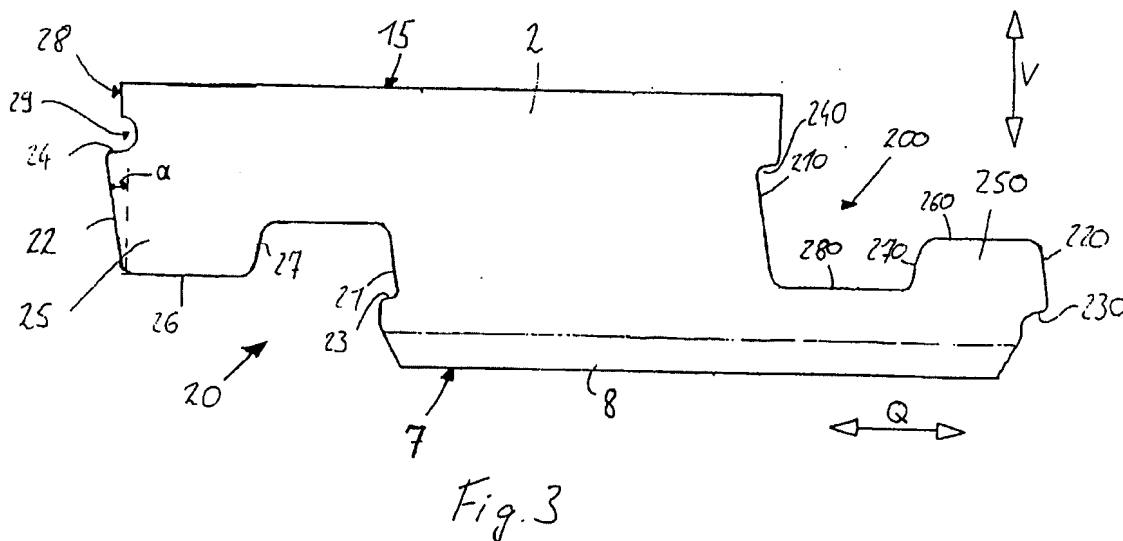
The rejection of claims 1 and 3 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject these claims should be reversed, and the application should be remanded to the Examiner.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See MPEP §2131. Appellants submit that the applied art does not show each and every feature of the claimed invention.

Independent claim 1 recites, in pertinent part,

... form-fitting elements for locking in the vertical direction (V) with a further panel formed on a second side edge running at an angle to the first side edge, wherein the form-fitting elements are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls.

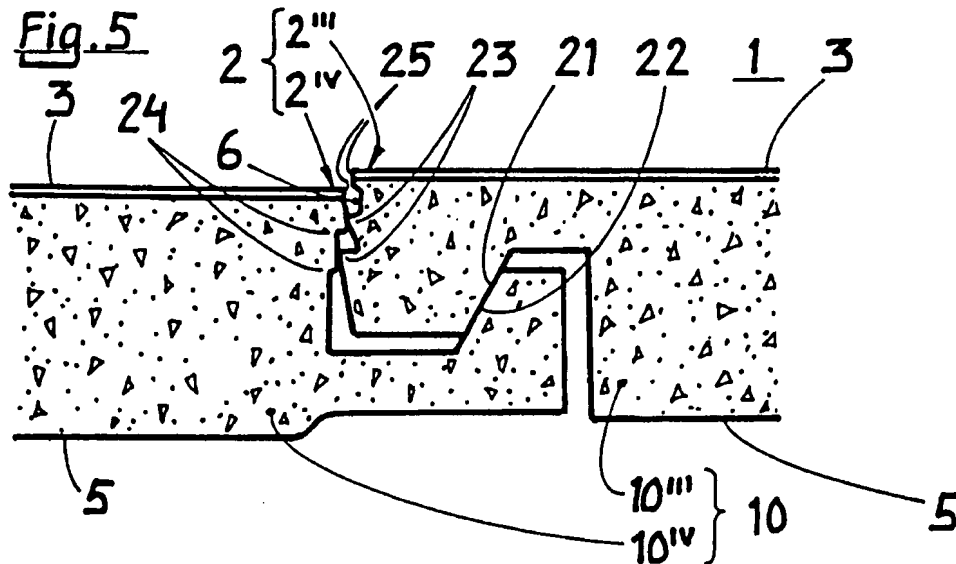
These features are shown in FIG. 3, which is a non-limiting embodiment of the present invention. For example, the form fitting elements are shown at reference numerals 23 and 24, which are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls 21, 22. FIG. 3 is reproduced below.



However, these features are not shown by Palsson.

The Examiner asserts that Palsson discloses form-fitting elements in FIGS. 5, 6, or 7 (Final Office Action, page 7). In a first explanation, the Examiner asserts that elements 23 (FIG. 5) are spaced apart in the vertical and transverse direction (Final Office Action, page 5). In another alternative explanation, the Examiner contends that elements 23 and 21 constitute form fitting elements for locking in the vertical direction spaced apart in the vertical direction (Final Office Action, page 5).

Appellants respectfully disagree. Appellants acknowledge that Palsson shows two snapping hooks 23 in the embodiment shown in FIG. 5. Moreover, these snapping hooks 23 are for locking in the vertical direction. However, it is respectfully submitted that the two snapping hooks 23 of FIG. 5 are not spaced apart in the transverse direction. As clearly seen from FIG. 5, reproduced below, snapping hooks 23 are aligned one over the other. Put another way, the snapping hooks 23 overlap each other, such that a portion of one snapping hook 23 is located directly over a portion of the other snapping hook 23. Therefore, unlike Appellant's recited form fitting elements, these snapping hooks 23 are not spaced apart in the transverse direction.



Moreover, the two snapping hooks 23 of FIG. 5 are not arranged on two spaced apart essentially vertical walls. Instead, both snapping hooks 23 are arranged on the same wall (see FIG. 5 of Palsson). In fact, it is because both snapping hooks are arranged on the same wall that they are not spaced in the transverse direction. Therefore, the two snapping hooks 23 of FIG. 5 do not constitute the recited form fitting elements.

In fact, Appellants are aware of Palsson's apparatus, as demonstrated by the Background section of the instant application. More specifically, Appellants' specification states:

WO 01/75247 A1 discloses a floor panel which, on a first side edge, has connecting means for locking in the transverse and vertical directions. These locking means are arranged on the longitudinal side of the panel and bring about locking by the connecting means being introduced and pivoted into a corresponding recess of a second panel. The transverse side of the panel has two snap-in hooks which, when the panels are laid, are intended to engage in corresponding undercuts of an adjacent panel and to hinder the vertical movement between the laid panels. The two snap-in hooks are located vertically one above the other.

The disadvantage with such a profile is the fact that such a profile configuration does not ensure that the panels are securely locked with one another since the snap-in hooks, which are arranged one above the other, are pressed in during the laying movement and, in the case of a resilient underlying surface, for example carpet, the transverse side springs out of the locking means when the panels are stepped on with force. This is also

due to the fact that the panel provided with the snap-in hooks is angled slightly relative to the corresponding panel when stepped on, with the result that the panel twists out to some extent.

(Appellants' specification, page 1)

Appellants' claimed invention overcomes the above noted deficiencies of Palsson by spacing apart the form-fitting elements in the transverse and vertical directions, which provides two spatially separate locking locations on the second side edge. This second side edge is advantageously arranged on the transverse side, and the spatially separated locking locations ensure that the panels, which have been positioned against one another and laid, are better secured (Appellants' specification, page 2).

Appellants also disagree with the Examiner's assertion that snapping hook 23 constitutes the first form fitting element and lower cheek surface 21 constitutes the second form fitting element. Lower cheek surface 21 does not lock the panel in the vertical direction. Instead, Palsson explicitly states that lower cheek surface 21 is for locking in the horizontal direction. More specifically:

The lower cheek surfaces 21 are intended to interact with mainly vertical upper cheek surfaces 22 arranged on the female vertical assembly joining members 10" so that two joined adjacent floor elements 1 are locked against each other in a horizontal direction.

(Palsson specification, page 7) [emphasis added].

Moreover, lower cheek surface 21 does not interact with any feature of the other panel to prevent the panel containing lower cheek surface 21 from moving vertically upward and out of engagement with the other panel. That is, if an upward force is applied to the panel having the lower cheek surface 21, then the lower cheek surface 21 will not prevent movement in the vertical direction. As such, Appellants respectfully submit that the Examiner is incorrectly construing lower cheek surface 21 as locking the panel in the vertical direction.

Furthermore, lower cheek surface 21 is not on an essentially vertically oriented wall. In the claimed invention, the form fitting elements 22, 23 are arranged on essentially vertically oriented walls 21, 22. However, Palsson's lower cheek surface 21 is not on an essentially vertically oriented wall. Instead, as seen in FIG. 5, the lower cheek surface 21 constitutes an angled surface extending between two horizontal surfaces. There is no vertical wall on which lower cheek surface is arranged.

Therefore, Appellants submit that Palsson's snapping hook 23 and lower cheek surface 21 do not constitute form-fitting elements for locking in the vertical direction (V) with a further panel formed on a second side edge running at an angle to the first side edge, wherein the form-fitting elements are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls, as recited in claim 1.

For all of the above reasons, Appellants submit that the applied art fails to teach or suggest every feature of the claim 1, and claim which depends from claim 1. Accordingly, Appellants respectfully request that the rejection of claims 1 and 3 be reversed.

Claim 4

The rejection of claim 4 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 4 depends from allowable independent claim 1, and additionally recites:

further comprising a first step-like milled relief formed on the second side edge and starting from the underside, wherein the first step-like milled relief includes an inner wall on which one said form-fitting element extending in the transverse direction (Q) is arranged and an outer wall on which an other said form-fitting element extending in the transverse direction (Q) is arranged, and further comprising a second step-like milled relief formed on a side edge that is located opposite the second side edge,

wherein the second step-like milled relief starts from the top side and has an other inner wall and an other outer wall, on which are formed undercuts which correspond with the one and the other form-fitting elements, wherein the first step-like milled relief forms a shoulder which projects in a direction of the underside and has an essentially horizontally oriented head surface, and further comprising a channel formed in the head surface along a longitudinal extent in relation to the second side edge.

The Examiner asserts that Palsson shows these features. More specifically, the Examiner equates the following features of Palsson with that of the claimed invention: an inner wall at reference number 21 and a form fitting element at reference number 21; undercuts 24 and 22; and a channel formed between 22 and the main body of the panel (Final Office Action, pages 7-8). Appellants respectfully disagree for the following reasons.

Appellants submit that Palsson does not disclose an inner wall on which one the form-fitting element extending in the transverse direction (Q) is arranged, as recited in claim 4. Initially, Appellants submit that it is improper for the Examiner to use the same element (i.e., element 21) to read on two separate claim features. In any event, Palsson's lower cheek surface 21 does not constitute both: (i) an inner wall; and (ii) a form fitting element arranged on the inner wall. Instead, the lower cheek surface 21 is merely shown as a sloped surface extending between two horizontal surfaces. The lower cheek surface, by itself, does not constitute both the inner wall and the form fitting element arranged on the inner wall.

Furthermore, Palsson does not disclose undercuts which correspond with the one and the other form-fitting elements, as also recited in claim 4. Appellants acknowledge that Palsson's element 24 constitutes an undercut. However, Appellants submit that Palsson's upper cheek surface 22 does not constitute an undercut as recited in the claimed invention. Appellants submit that the Examiner is failing to give the term "undercut" its plain and ordinary meaning as required by MPEP §2111.01. As discussed in Appellants response filed June 28, 2006, the plain

and ordinary meaning of the term “undercut” is “the action or result of cutting away from the underside or lower part of something” (see Merriam Webster’s Collegiate Dictionary, Tenth Edition, emphasis added).

Appellants submit that the upwardly facing projection of cheek surface 22 is not the result of cutting away from the underside of any portion of Palsson’s panel, and therefore is not an undercut. Moreover, the upper cheek surface 22 does not function in the same way as the undercut of the claimed invention. That is, the undercut of the claimed invention, when in contact with a corresponding portion of an adjacent panel, prevents the adjacent panel from moving upward in the vertical direction. However, Palsson explicitly teaches that the cheek surfaces 21, 22 are for locking in the horizontal direction (page 7). Therefore, upper cheek surface 22 does not constitute an undercut.

Even further, Palsson does not disclose the first step-like milled relief forms a shoulder which projects in a direction of the underside and has an essentially horizontally oriented head surface, and further comprising a channel formed in the head surface, as recited in claim 4. The Examiner contends that the “channel is between 22 and the main body of the panel” in FIG. 5 of Palsson. Appellants disagree, and submit that what the Examiner identifies as a channel is not comprised in an essentially horizontally oriented head surface of a shoulder which projects in a direction of the underside. There is no downwardly projecting shoulder in Palsson’s panel. Moreover, what the Examiner identifies as the channel is not formed in a horizontal surface of such a shoulder. By contrast, Appellants’ invention comprises a dust channel 26’ formed in a horizontal surface 26 of a downwardly projecting shoulder 25 (FIGS. 2 and 3). Palsson simply does not disclose these features.

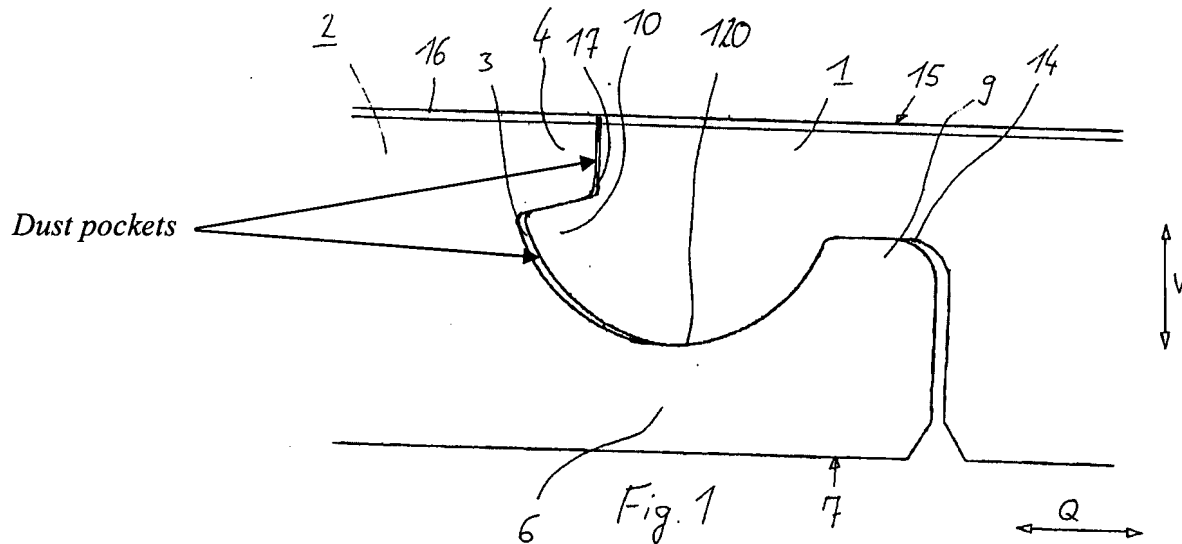
For all of the above reasons, Appellants submit that Palsson does not disclose all of the features of claim 4. Therefore, the rejection of claim 4 is improper and should be reversed.

Claim 12

The rejection of claim 12 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 12 depends from allowable independent claim 1, and additionally recites that the walls forming at least a portion of the tongue and groove, respectively, are sized and shaped to form a dust pocket. The Examiner contends that Palsson discloses this feature, explaining that “upon examination of the drawings of Palsson the elements appear to have a similar size and shape as applicants claimed/disclosed invention” (Final Office Action, page 9). Appellants disagree for the following reasons.

Palsson does not show the tongue and groove connection in the fully assembled state. Therefore, it is impossible to determine from the figures of Palsson that the tongue and groove are sized and shaped to form a dust pocket. Moreover, Palsson does not describe any such dust pocket in the specification. As such, the Examiner’s statement amounts to nothing more than an unfounded assertion, with no basis in the evidence of record. Contrary to Palsson, FIG. 1 of the present application shows the tongue and groove connection in the assembled state, where it is clearly seen that the tongue and groove are sized and shaped to form at least one dust pocket. These dust pockets are identified in annotated FIG. 1, reproduced below:



Palsson simply does not show or describe such features. As such, it is impossible to conclude that Palsson discloses the walls forming at least a portion of the tongue and groove, respectively, are sized and shaped to form a dust pocket.

Furthermore, to the extent that the Examiner is basing the instant rejection on an argument of inherency consistent with MPEP § 2112, Appellants note that MPEP § 2112 specifically states, in part:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In the present situation, as the structures are not identical or even similar, as discussed above, relying on inherency would be improper. This is simply because many of the structural features of the claimed invention and Palsson are not even remotely the same and, as such, the structure features of Palsson, even if combined, cannot result in the claimed invention. Also, the Examiner has not provided any basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

Therefore, the rejection of claim 12 is improper and should be reversed.

Claim 5-7

The rejection of claims 5-7 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject these claims should be reversed, and the application should be remanded to the Examiner.

Independent claim 5 recites, in part:

... wherein the form-fitting elements are spaced apart from one another in the vertical direction and the transverse direction

.... the first step-like milled relief includes an essentially horizontal head surface with a channel formed therein.

The Examiner is of the opinion that Palsson discloses these features, for example, in Figure 5. More specifically, the Examiner is of the opinion that Palsson discloses an inner wall at 21, a form fitting element at 21 on the inner wall, an outer wall opposite 21 and generally at 23, and a form fitting element at 23 on the outer wall. The Examiner also contends that “the underside of the step-like relief is generally horizontal and the channel is between 21 and the body of the panel as seen in figure 5” (Final Office Action, pages 8-9).

Appellants respectfully disagree and incorporate by reference the arguments presented above with respect to claims 1 and 4. Generally speaking, and in accordance with those arguments, Palsson's lower cheek surface 21 does not constitute form-fitting elements for locking in the vertical direction. Instead, the lower cheek surface 21 is for locking in the horizontal direction, as explicitly stated by Palsson at page 7 of Palsson's specification.

Furthermore, lower cheek surface 21 does not constitute both (i) an inner wall; and (ii) a form fitting element arranged on the inner wall. Instead, the lower cheek surface 21 is merely shown as a sloped surface extending between two horizontal surfaces, and there is no distinction between a wall and an element formed on the wall. Moreover, it is improper for the Examiner to use the same element (i.e., element 21) to read on two separate claim features.

Even further, Palsson does not disclose the first step-like milled relief includes an essentially horizontal head surface with a channel formed therein. What the Examiner identifies as a channel is not comprised in an essentially horizontal surface. The channel is beside a horizontal surface (i.e., the bottom of the tongue), but is not formed in a horizontal surface. By contrast, Appellants' invention comprises a dust channel 26' formed in a horizontal surface 26 of a downwardly projecting shoulder 25 (FIGS. 2 and 3). Palsson simply does not disclose these features.

For all of the above reasons, Appellants submit that the applied art fails to teach or suggest every feature of claim 5, and claims 6 and 7 which depend therefrom. Accordingly, Appellants respectfully request that the rejection of claims 5-7 be reversed.

Claim 9

The rejection of claim 9 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 9 depends from allowable independent claim 5, and additionally recites a side edge opposite the second side edge having a second step-like milled relief and having spaced apart undercuts which correspond to the form-fitting elements.

The Examiner notes that Palsson asserts that the second milled relief is shown at reference numeral 2^{IV} and the space apart undercuts 24 correspond to the form fitting elements. Appellants disagree for the following reasons.

In Palsson, the reference numeral 2^{IV} is described as a second edge of the panel. The second side edge has no milled relief. In fact, the second side edge is shown to have only a vertical wall.

Therefore, the rejection of claim 9 is improper and should be reversed.

Claim 13

The rejection of claim 13 under 35 U.S.C. §102(b) is in error, the decision of the Examiner to reject this claim should be reversed, and the application should be remanded to the Examiner.

Claim 13 depends from allowable independent claim 5, and additionally recites that the walls forming at least a portion of the tongue and recess, respectively, are sized and shaped to form a dust pocket. The Examiner contends that Palsson discloses this feature, explaining that “upon examination of the drawings of Palsson the elements appear to have a similar size and shape as Appellants' claimed/disclosed invention” (Final Office Action, page 9).

Appellants disagree and incorporate by reference the arguments discussed above with respect to claim 12. Generally speaking, and in accordance with those arguments, Appellants submit that Palsson simply does not show or describe a dust pocket, and that the Examiner's assertion is unsupported by the evidence. That is, Palsson does not show the tongue and groove connection in the fully assembled state. Therefore, it is impossible to conclude that the figures

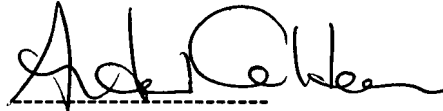
disclose that the tongue and groove are sized and shaped to form a dust pocket. Moreover, Palsson does not describe any such dust pocket in the specification.

Therefore, the rejection of claim 13 is improper and should be reversed.

CONCLUSION

In view of the foregoing remarks, Appellants submit that claims 1, 3-7, 9, 12, and 13 are patentably distinct from the prior art of record and are in condition for allowance. Accordingly, Appellants respectfully request that the Board reverse the Examiner's rejection of claims 1, 3-7, 9, 12, and 13, and remand the application to the Examiner for allowance of the pending claims.

Respectfully submitted,
Thomas GRAFENAUER

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', written over a horizontal dashed line.

Andrew M. Calderon
Reg. No. 38,093

August 14, 2007
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(VIII) CLAIMS APPENDIX

The following is a listing of the claims involved in the appeal.

1. A floor panel which is bounded in a horizontal plane by a top side having a decorative layer, and an underside provided for bearing on an underlying surface, the floor panel being provided with means for releasably connecting at least two panels, wherein the connecting means are formed on at least one first side edge such that locking takes place in a transverse direction (Q) and vertical direction (V), and further comprising form-fitting elements for locking in the vertical direction (V) with a further panel formed on a second side edge running at an angle to the first side edge, wherein the form-fitting elements are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls, and further comprising a tongue formed on the first side edge and extending in the longitudinal direction of the first side edge, and a recess corresponding to the tongue formed on an opposite side edge, wherein an underside of the tongue, starting from a tip of the tongue, has a continuously curved contour and wherein a radius of curvature of the contour of the underside of the tongue is constant over at least 90 degrees.

3. The floor panel according to Claim 1, wherein the recess is designed as a groove with a top lip and a bottom lip, in which the tongue can be latched in the transverse direction (Q).

4. The floor panel according to Claim 1, further comprising a first step-like milled relief formed on the second side edge and starting from the underside, wherein the first step-like milled relief includes an inner wall on which one said form-fitting element extending in the transverse

direction (Q) is arranged and an outer wall on which an other said form-fitting element extending in the transverse direction (Q) is arranged, and further comprising a second step-like milled relief formed on a side edge that is located opposite the second side edge, wherein the second step-like milled relief starts from the top side and has an other inner wall and an other outer wall, on which are formed undercuts which correspond with the one and the other form-fitting elements, wherein the first step-like milled relief forms a shoulder which projects in a direction of the underside and has an essentially horizontally oriented head surface, and further comprising a channel formed in the head surface along a longitudinal extent in relation to the second side edge.

5. A floor panel, comprising:

a top side;

an underside for bearing on an underlying surface;

a first side edge having a tongue;

an opposite side edge having a recess corresponding to the tongue; and

a second side edge extending in a transverse direction to the first side edge and having form-fitting elements for locking in a vertical direction with a further panel, wherein the form-fitting elements are spaced apart from one another in the vertical direction and the transverse direction,

the second side edge includes a first step-like milled relief starting from the underside and having an essentially vertical inner wall and an essentially vertical outer wall, wherein one said form-fitting element is formed on the inner wall and an other said form-fitting element is formed on the outer wall, and

the first step-like milled relief includes an essentially horizontal head surface with a channel formed therein.

6. The floor panel of claim 5, wherein an underside of the tongue has a radius of curvature that is constant over at least 90 degrees.

7. The floor panel of claim 5, wherein the recess is formed as a groove with a top lip and a bottom lip, in which the tongue of another floor panel can be latched in the transverse direction.

9. The floor panel of claim 5, further comprising a side edge opposite the second side edge having a second step-like milled relief and having spaced apart undercuts which correspond to the form-fitting elements.

12. The floor panel of claim 1, wherein walls forming at least a portion of the tongue and groove, respectively, are sized and shaped to form a dust pocket.

13. The floor panel of claim 5, wherein walls forming at least a portion of the tongue and recess, respectively, are sized and shaped to form a dust pocket.

(IX) EVIDENCE APPENDIX

This section lists evidence submitted pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132, or any other evidence entered by the Examiner and relied upon by Appellant in this appeal, and provides for each piece of evidence a brief statement setting forth where in the record that evidence was entered by the Examiner. Copies of each piece of Evidence are provided as required by 37 C.F.R. §41.37(c)(1)(ix).

NO.	EVIDENCE	BRIEF STATEMENT SETTING FORTH WHERE IN THE RECORD THE EVIDENCE WAS ENTERED BY THE EXAMINER
1	N/A	N/A

(X) RELATED PROCEEDINGS APPENDIX

Pursuant to 37 C.F.R. §41.37(c)(1)(x) copies of the following decisions rendered by a court or the Board in any proceeding identified above in the Related Appeals and Interferences section.

NO.	TYPE OF PROCEEDING	REFERENCE NO.	DATE
1	N/A	N/A	N/A